



General Assembly

January Session, 2011

**Substitute Bill No. 1112**

\* \_\_\_\_SB01112JUD\_\_042711\_\_\_\_ \*

**AN ACT CONCERNING BOATING UNDER THE INFLUENCE.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 15-140l of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2011*):

4 (b) Any person guilty of reckless operation of a vessel in the first  
5 degree while under the influence shall be fined not less than two  
6 thousand five hundred dollars or more than five thousand dollars or  
7 imprisoned not more than two years, or both and such person's safe  
8 boating certificate, certificate of personal watercraft operation or right  
9 to operate a vessel that requires a safe boating certificate shall be  
10 suspended by the commissioner in accordance with the provisions of  
11 section 15-133.

12 Sec. 2. Subsection (b) of section 15-140n of the general statutes is  
13 repealed and the following is substituted in lieu thereof (*Effective July*  
14 *1, 2011*):

15 (b) Any person guilty of reckless operation of a vessel in the second  
16 degree while under the influence shall be fined not less than five  
17 hundred dollars or more than one thousand dollars or imprisoned not  
18 more than six months, or both and such person's safe boating  
19 certificate, certificate of personal watercraft operation or right to  
20 operate a vessel that requires a safe boating certificate shall be

21 suspended by the commissioner in accordance with the provisions of  
22 section 15-133.

23 Sec. 3. Subsection (j) of section 15-140q of the general statutes is  
24 repealed and the following is substituted in lieu thereof (*Effective July*  
25 *1, 2011*):

26 (j) Notwithstanding the provisions of subsections (b) to (i),  
27 inclusive, of this section, any peace officer who obtains the results of a  
28 chemical analysis of a blood sample taken from an operator of a vessel  
29 involved in an accident who suffered or allegedly suffered physical  
30 injury in such accident shall notify the commissioner and submit to the  
31 commissioner a written report if such results indicate that at the time  
32 of the alleged offense such person had an elevated blood alcohol  
33 content, and if such person was arrested for a violation of section 15-  
34 132a, subsection (d) of section 15-133 or section 15-140l, as amended by  
35 this act, or 15-140n, as amended by this act, in connection with such  
36 accident. The report shall be made on a form approved by the  
37 commissioner containing such information as the commissioner  
38 prescribes and shall be subscribed and sworn under penalty of false  
39 statement, as provided in section 53a-157b, by the peace officer. The  
40 commissioner shall, after notice and an opportunity for hearing, which  
41 shall be conducted in accordance with chapter 54, suspend the safe  
42 boating certificate, right to operate a vessel that requires a safe boating  
43 certificate for operation or certificate of personal watercraft operation  
44 of such person for a period of up to ninety days, or, if such person has  
45 previously had such person's operating privilege suspended under this  
46 section, for a period up to one year. Each hearing conducted under this  
47 section shall be limited to a determination of the following issues: (1)  
48 Whether the peace officer had probable cause to arrest the person for  
49 operating a vessel while under the influence of intoxicating liquor or  
50 drugs, or both, or while such person has an elevated blood alcohol  
51 content; (2) whether such person was placed under arrest; (3) whether  
52 such person was operating the vessel; (4) whether the results of the  
53 analysis of the blood of such person indicate that such person had an  
54 elevated blood alcohol content; and (5) whether the blood sample was

55 obtained in accordance with conditions for admissibility as set forth in  
56 [subsection (b) of section 15-140r] section 15-140s, as amended by this  
57 act. If, after such hearing, the commissioner finds on any issue in the  
58 negative, the commissioner shall not impose a suspension. The fees of  
59 any witness summoned to appear at the hearing shall be the same as  
60 provided by the general statutes for witnesses in criminal cases.

61 Sec. 4. Section 15-140r of the general statutes is repealed and the  
62 following is substituted in lieu thereof (*Effective July 1, 2011*):

63 (a) Except as provided in section 15-140s, as amended by this act, or  
64 subsection (d) of this section, in any criminal prosecution for the  
65 violation of section 15-132a, subsection (d) of section 15-133, section 15-  
66 140l l, as amended by this act, or 15-140n l, as amended by this act, or  
67 subsection (b) of section 53-206d, evidence respecting the amount of  
68 alcohol or drug in the defendant's blood or urine at the time of the  
69 alleged offense, as shown by a chemical analysis of the defendant's  
70 breath, blood or urine shall be admissible and competent provided: (1)  
71 The defendant was afforded a reasonable opportunity to telephone an  
72 attorney prior to the performance of the test and consented to the  
73 taking of the test upon which such analysis is made; (2) a true copy of  
74 the report of the test result was mailed to or personally delivered to the  
75 defendant within twenty-four hours or by the end of the next regular  
76 business day, after such result was known, whichever is later; (3) the  
77 test was performed by or at the direction of a certified law enforcement  
78 officer according to methods and with equipment approved by the  
79 Department of Public Safety, and if a blood test was performed, it was  
80 performed on a blood sample taken by a person licensed to practice  
81 medicine and surgery in this state, a qualified laboratory technician, an  
82 emergency medical technician II or a registered nurse in accordance  
83 with the regulations adopted under subsection (b) of this section; (4)  
84 the device used for such test was checked for accuracy in accordance  
85 with the regulations adopted under subsection (b) of this section; (5) an  
86 additional chemical test of the same type was performed at least  
87 [thirty] ten minutes after the initial test was performed or, if requested  
88 by the peace officer for reasonable cause, an additional chemical test of

89 a different type was performed to detect the presence of a drug or  
90 drugs other than or in addition to alcohol, except that the results of the  
91 initial test shall not be inadmissible under this subsection if reasonable  
92 efforts were made to have such additional test performed in  
93 accordance with the conditions set forth in this subsection and such  
94 additional test was not performed or was not performed within a  
95 reasonable time, or the results of such additional test are not  
96 admissible for failure to meet a condition set forth in this subsection;  
97 and (6) evidence is presented that the test was commenced within two  
98 hours of operation of the vessel or expert testimony establishes the  
99 reliability of a test commenced beyond two hours of operation of the  
100 vessel. In any prosecution under this section it shall be a rebuttable  
101 presumption that the results of such chemical analysis establish the  
102 ratio of alcohol in the blood of the defendant at the time of the alleged  
103 offense, except that if the results of the additional test indicate that the  
104 ratio of alcohol in the blood of such defendant is ten-hundredths of one  
105 per cent or less of alcohol, by weight, and is higher than the results of  
106 the first test, evidence shall be presented that demonstrates that the  
107 test results and the analysis thereof accurately indicate the blood  
108 alcohol content at the time of the alleged offense.

109 (b) The Commissioner of Public Safety shall ascertain the reliability  
110 of each method and type of device offered for chemical testing and  
111 analysis of blood, of breath and of urine and certify those methods and  
112 types which the Commissioner of Public Safety finds suitable for use in  
113 testing and analysis of blood, breath and urine, respectively, in this  
114 state. The Commissioner of Public Safety, after consultation with the  
115 Commissioner of Public Health, shall adopt regulations, in accordance  
116 with chapter 54, governing the conduct of chemical tests, the operation  
117 and use of chemical test devices and the training and certification of  
118 operators of such devices and the drawing or obtaining of blood,  
119 breath or urine samples as the Commissioner of Public Safety finds  
120 necessary to protect the health and safety of persons who submit to  
121 chemical tests and to insure reasonable accuracy in testing results.  
122 Such regulations shall not require recertification of a peace officer

123 solely because such officer terminates such officer's employment with  
124 the law enforcement agency for which certification was originally  
125 issued and commences employment with another such agency.

126 (c) If a person is charged with a violation of section 15-132a,  
127 subsection (d) of section 15-133, 15-140l, as amended by this act, or 15-  
128 140n, as amended by this act, the charge may not be reduced, nolle or  
129 dismissed unless the prosecuting authority states in open court such  
130 prosecutor's reasons for the reduction, nolle or dismissal.

131 (d) In any criminal prosecution for a violation of section 15-132a,  
132 subsection (d) of section 15-133 or section 15-140l, as amended by this  
133 act, or 15-140n, as amended by this act, evidence that the defendant  
134 refused to submit to a blood, breath or urine test requested in  
135 accordance with section 15-140q, as amended by this act, shall be  
136 admissible provided the requirements of subsection (a) of said section  
137 have been satisfied. If a case involving a violation of section 15-132a,  
138 subsection (d) of section 15-133 or section 15-140l, as amended by this  
139 act, or 15-140n, as amended by this act, is tried to a jury, the court shall  
140 instruct the jury as to any inference that may or may not be drawn  
141 from the defendant's refusal to submit to a blood, breath or urine test.

142 Sec. 5. Section 15-140s of the general statutes is repealed and the  
143 following is substituted in lieu thereof (*Effective July 1, 2011*):

144 Evidence respecting the amount of alcohol or drug in the blood or  
145 urine of an operator of a vessel involved in an accident who has  
146 suffered or allegedly suffered physical injury in such accident, which  
147 evidence is derived from a chemical analysis of a blood or urine  
148 sample taken from such person at the scene of the accident, while en  
149 route to a hospital or at a hospital after such accident, shall be  
150 competent evidence to establish probable cause for the arrest by  
151 warrant of such person for a violation of [subsection (d) of section]  
152 section 15-132a, 15-133, 15-140l, as amended by this act, or 15-140n, as  
153 amended by this act, and shall be admissible and competent in any  
154 subsequent prosecution thereof if: (1) The blood or urine sample was

155 taken in the regular course of business of the hospital for the diagnosis  
 156 and treatment of such injury; (2) [the blood sample was taken by a  
 157 person licensed to practice medicine in this state, a qualified laboratory  
 158 technician, an emergency technician II or a registered nurse] any such  
 159 blood sample was taken and analyzed in accordance with the  
 160 regulations adopted pursuant to subsection (b) of section 15-140r, as  
 161 amended by this act; (3) a police officer has demonstrated to the  
 162 satisfaction of a judge of the Superior Court that such officer has  
 163 reason to believe that such person was operating a vessel while under  
 164 the influence of intoxicating liquor or drug, or both, and that the  
 165 chemical analysis of such blood or urine sample constitutes evidence  
 166 of the commission of the offense of operating a vessel upon the waters  
 167 of this state while under the influence of intoxicating liquor or drug, or  
 168 both, in violation of [subsection (d) of section] section 15-132a, 15-133,  
 169 15-140l, as amended by this act, or 15-140n, as amended by this act;  
 170 and (4) such judge has issued a search warrant in accordance with  
 171 section 54-33a authorizing the seizure of the chemical analysis of such  
 172 blood or urine sample.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	15-140l(b)
Sec. 2	<i>July 1, 2011</i>	15-140n(b)
Sec. 3	<i>July 1, 2011</i>	15-140q(j)
Sec. 4	<i>July 1, 2011</i>	15-140r
Sec. 5	<i>July 1, 2011</i>	15-140s

**ENV**      *Joint Favorable Subst.-LCO*

**JUD**      *Joint Favorable*